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Michelle Park Steel: No time for new, untested tax

A proposal by governor's tax-reform panel would not solve state's problems.

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California's tax climate is already forcing residents and businesses to leave the state. This exodus contributes to California's two major problems: systemic state budget deficits and unemployment. The recent recommendations by Gov. Schwarzenegger's Commission on the 21st Century Economy change the tax mix, but do not fix either problem.

The commission proposes to abolish the state sales tax – a tax Californians see when we pay it – and impose the stealth business net-receipts tax. At least the sales tax is honest. The BNRT is the most deceptive tax in American history.

The National Federation of Independent Businesses' John Kabateck said, "If the business net receipts tax is considered a starting point … then it is a poor place to start."

For a good starting point, business net receipts tax is a misnomer; the BNRT should properly be called the "Bring me New Revenue Tax."

Labor is a taxable expense under BNRT. This will push labor-intensive businesses out of California, or overseas, costing the state both jobs and tax revenue.

The commission proposes to levy the BNRT on out-of-state businesses that sell goods or services in California – including

Internet purchases and downloads. This provision will likely be subject to constitutional challenge as an infringement on interstate commerce, just as attempts to force out-of state companies to collect use tax have been.

Californians lose either way. If, after years of litigation, the plan is found to be legal, California consumers will lose choices as businesses such as Amazon make good on their pledge to pull out of the state rather than pay the BNRT. If illegal, California products will be at a competitive disadvantage to goods and services produced outside the state.

Since the new tax will be embedded in the cost of goods and services, the cost-of living calculation for California will increase, leading to higher state employee pay, retiree benefits and entitlement programs – increasing the cost of government without any real change in the fundamentals of the economy.

Most services will be taxed for the first time under the BNRT. That would include hospitals, doctors, dentists, lawyers, accountants, etc. Service sectors are already more heavily regulated – shouldering more than half the cost of state regulations – and therefore more costly than other sectors, without having to pay a tax both on the additional regulatory cost and the service.

Many services are not something you want, they are necessities. You go to the doctor to protect your health; you hire a lawyer to protect yourself; a dentist to protect your teeth; and an accountant to comply with the state's laws, pay taxes and stay out of jail.

BNRT rates will adjust over time. Only in the fifth year will we know what the tax rate will be permanently. However, if we are in a recession that year, the rate will be set extra high to compensate for the low revenue. If we are in boom times, the rate will be set extra low. Potentially, this will create the same lopsided revenue problem that the Commission was created to eliminate.

The plan calls for a cap on the BNRT rate of 4 percent, but without a constitutional amendment the actual tax will be up to legislators and the governor.

The BNRT has never been tried before, anywhere, and the closest example we have is a tax that was implemented in Michigan, then scrapped because of difficulties in implementation.

No doubt, the BNRT will create an administrative swamp for tax agencies already bogged down in a complex tax code. Thousands of new pages of unseen regulations, put in place by bureaucrats, will result in unintended violations and years of litigation, as California's over 800,000 businesses guess how to comply. Each new legal case will be one of first impression, thereby reinterpreting the new law.

Businesses require certainty for growth. A new tax phased in over five years while other taxes slowly fade out signals uncertainty. Rather than waiting five years to evaluate how things shake out, many businesses will expand in states with stable (and lower) tax climates.

Who will protect California's taxpayers? The commission's proposal for a new tax appeals body will take away taxpayers' last line of defense – an elected representative directly accountable to the people – in favor of representatives of the tax collection bureaucracy, under the direction of the governor.

Novel, untested taxes are not the solution to California's problems.

The BNRT will cause numerous complications that we are already aware of, but even more that we cannot predict.

If these changes are implemented, our day of reckoning – when Californians are finally forced to address the need for fundamental spending reform and permanent tax reduction – will, once again, be postponed.

As King Solomon said to his son, "A prudent man sees danger and takes refuge, but the simple keep going and suffer it."